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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. REGINALD ANTHONY GREEN, Defendant and Appellant.	A105162 (San Mateo County Super. Ct. No. SC054488)

Following a no contest plea, Reginald Anthony Green was convicted of petty theft with a prior theft-related conviction. Green's sole contention on appeal relates to the denial of a motion to suppress evidence seized by police during a search of his residence. Specifically, he maintains that the trial court erred in finding that the police had substantially complied with the "knock-notice" requirements of Penal Code sections 844 and 1531[1] prior to searching his residence. We disagree with Green and accordingly affirm.

I.

On July 9, 2003, Colma police responded to a reported theft of a power drill from the Home Depot store on Colma Boulevard. Witnesses shown a police photographic lineup identified appellant Green as the perpetrator. Colma police officer Peter Renois then obtained appellant's address from a San Francisco Police Department report of an unrelated incident. Officer Renois also learned that Green was on probation and subject to a search condition.

[1] All further statutory references are to the Penal Code unless otherwise indicated.

Officer Renois, accompanied by officers from the Colma and San Francisco Police Departments, went to Green's address at about 7:00 a.m. on July 11, 2003. According to Renois, the police had two objectives that morning – to arrest Green and to conduct a probation search. The building at the address is a detached duplex. The police first spoke to the residents of the downstairs apartment, who indicated that Green lived in the upstairs unit. Officer Renois then proceeded to the upstairs apartment, where he knocked repeatedly on the door and announced that he was a police officer. Despite what he described as "excessive knocking," the officer received no response.

The officers then called the owner of the apartment building and requested that he bring the keys to the apartment. While awaiting the landlord's arrival, the officers searched Green's car, which they had previously located parked on the street some 50 feet away from the residence. The landlord arrived with the keys approximately 10 minutes after receiving the call from the police and some 20 to 25 minutes after the initial arrival of the police on the scene.

Officer Renois could not recall whether he knocked on the apartment door again before using the key. At the suppression hearing, he stated, "I think at that point we would have exhausted, if there was someone out there, they would have been hiding. That's what I believe." Opening the door with the landlord's key, Officer Renois and the other officers entered the apartment. Once inside, they conducted a sweep of the flat. They located a juvenile female in the far bedroom, and they asked her whether anyone else was in the residence. The juvenile directed the police to the front bedroom, the door of which the police found locked. Officer Renois then knocked on the bedroom door and announced his presence as a police officer. He heard "somebody possibly moving inside" and located the key to bedroom door. He inserted the key in the lock and then heard someone inside the bedroom ask: "Who is it?" Officer Renois responded by again identifying himself as a police officer, and the occupant of the bedroom opened the door. The officers found Green inside the bedroom, along with identification, various personal effects, and clothing. In the bedroom closet the officers found a drill.

Green was charged with theft on August 27, 2003. At his arraignment two days later, he entered a plea of not guilty. Green moved to suppress evidence under section 1538.5, seeking exclusion of all evidence seized by the police during the July 11, 2003, search of the apartment. On October 15, 2003, the trial court conducted a suppression hearing and requested additional briefing from the parties.[2]

On October 17, 2003, after hearing argument from counsel, the trial court denied Green's motion to suppress. The trial court found that there had been substantial compliance with the statutory knock-notice requirements. It found that there had been an initial knock-notice when the police first arrived at the residence, that the officers had remained in the immediate area of the residence while awaiting the arrival of the landlord, and that there was further compliance at the bedroom door when the officers again knocked and announced their presence.

Following the denial of the motion to suppress, Green pleaded no contest to petty theft with a prior theft-related conviction. He was then sentenced to state prison for a term of 16 months. This appeal followed.

II.

Green presents a single issue for our review. Conceding, as he must, that the police did knock and give notice of their presence after their initial arrival at the

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[2] Specifically, the trial court requested that the parties address the effect of the then-recent decision in *People v. Murphy* (2004) 118 Cal.App.4th 821, review granted on specified issues July 21, 2004, S125572. In that case, a divided panel of Division One of the Fourth District held that a no-knock entry and search of a probationer's residence had violated the knock-notice requirements of section 1531 and the Fourth Amendment and that no exigent circumstances existed that would have excused compliance with those requirements. (*Murphy, supra,* 118 Cal.App.4th at pp. 832-833, 844)

After completion of briefing in the appeal now before us, the California Supreme Court granted review in *Murphy,* and the Fourth District's opinion has thus been superseded. As a consequence, although both parties have relied on *Murphy* in their briefs in this case, we will not address that decision, other than to note that it did not address the fact pattern presented here—namely, a delay between the initial knocking and announcement of presence and the subsequent entry. Likewise, the Supreme Court limited its review in *Murphy* to the issues of exigent circumstances and inevitable discovery, issues not presented here. (See *post,* fn. 7.)

residence, he asserts that sections 844 and 1531 required the officers to knock and give notice a *second* time before entering the apartment with the landlord's key. Green argues, in effect, that the lapse of time between the initial knock and notice and the subsequent entry was so great as to render the initial knock and notice ineffective. Before turning to the substance of this contention, we review the relevant legal principles.

A. *Standard of Review*

In reviewing the trial court's ruling on the motion to suppress evidence, this court defers to the trial court's findings of fact, whether express or implied, if those findings are supported by substantial evidence. (*People v. Loewen* (1983) 35 Cal.3d 117, 123; *People v. Mays* (1998) 67 Cal.App.4th 969, 972 (*Mays*); see generally *People v. Williams* (1988) 45 Cal.3d 1268, 1301 [reviewing respective roles of trial and appellate court in ruling on motions to suppress].) "We then independently apply the pertinent legal principles to those facts to determine, as a matter of law, whether there has been an unreasonable search or seizure." (*People v. Hoag* (2000) 83 Cal.App.4th 1198, 1207 (*Hoag*).)

B. *The Fourth Amendment and Sections 844 and 1531*

Section 844 governs forcible entry by an officer to effect an arrest.[3] Section 1531 is concerned with forcible entry to execute a search warrant.[4] Both sections are implicated in this case, because the police entered Green's residence to arrest him and to conduct a probation search. Although the two sections are worded somewhat differently, the courts have construed them as imposing the same basic requirements on forcible entries by police officers. (*People v. Schad* (1971) 21 Cal.App.3d 201, 207 (*Schad*); see also *People v. Peterson* (1973) 9 Cal.3d 717, 722, fn. 7 ["The two sections are governed

[3] Section 844 provides in pertinent part: "To make an arrest, . . . a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired."

[4] Section 1531 provides: "The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance."

by similar principles of law and for many purposes the cases applying one or the other of the statutes may be interchangeably cited"] (*Peterson*).) Before officers may enter a dwelling under authority of either provision, they must (i) knock or employ some other means reasonably calculated to notify the occupant of their presence, (ii) make an announcement of their authority, and (iii) state or explain their purpose for demanding admittance.[5] (*Schad, supra,* 21 Cal.App.3d at p. 207) One difference between the two sections is that section 1531 requires that the police be refused admittance before they may force entry, whereas section 844 contains no such requirement. (Compare *Jeter v. Superior Court* (1983) 138 Cal.App.3d 934, 937 [under section 1531 "an officer executing a search warrant [may] break into the premises only if he is refused admission after announcing 'his authority and purpose' "] (*Jeter*) with *People v. Trujillo* (1990) 217 Cal.App.3d 1219, 1226, fn. 6 [section "844 does not require a refusal before forced entry to make an arrest"] (*Trujillo*).)

Whether the police comply with these statutory requirements is relevant to the reasonableness of the search under the Fourth Amendment, because the Supreme Court of the United States has "held that the common law knock-and-announce principle is one focus of the reasonableness enquiry." (*United States v. Banks* (2003) 540 U.S. 31, __ [124 S.Ct. 521, 525], citing *Wilson v. Arkansas* (1995) 514 U.S. 927, 934; see also *Hoag, supra,* 83 Cal.App.4th at p. 1209 ["a violation of knock-notice is *part of* the reasonableness inquiry under the Fourth Amendment"].) Thus, noncompliance with these statutory provisions may render a search unreasonable within the meaning of the Fourth Amendment. (*People v. Jacobs* (1987) 43 Cal.3d 472, 484 (*Jacobs*).)

C. *The Substantial Compliance Doctrine*

Although a violation of the knock-notice requirements may make a search unreasonable under the Fourth Amendment, California courts have long recognized that not every technical violation of the *statutory* requirements constitutes a *constitutional*

[5] That Green was subject to a probation search condition does not place the search at issue outside the scope of sections 844 and 1531. California courts have consistently held that probation searches are subject to knock-notice requirements. (See *Mays, supra,* 67 Cal.App.4th at p. 973, fn.4 [citing cases].)

defect so severe as to require the exclusion of the evidence seized as a result of the search.[6] (E.g., *Jacobs, supra,* 43 Cal.3d at p. 482-483 ["It is well settled that substantial compliance with the statute is sufficient"]; *Peterson, supra,* 9 Cal.3d at p. 723; *Hoag, supra,* 83 Cal.App.4th at pp. 1208-1212; *Trujillo, supra,* 217 Cal.App.3d at pp. 1227-1228; *People v. Tacy* (1987) 195 Cal.App.3d 1402, 1414-1422 (*Tacy*).) "Substantial compliance" with the statutory requirements "means '*actual* compliance in respect to the substance essential to every reasonable objective of the statute' as distinguished from 'mere technical imperfections of form.' " (*Jacobs, supra,* 43 Cal.3d at p. 483.)

As this court explained over 30 years ago, "the rule, under either section [844 or 1531] is not mechanical." (*Hart v. Superior Court* (1971) 21 Cal.App.3d 496, 501.) Rather, the focus of the court's inquiry is whether, under the totality of the circumstances, the policies underlying the knock-notice requirements have been served. (*Hoag, supra,* 83 Cal.App.4th at pp. 1208, 1211) Those policies, as articulated by the California Supreme Court are " '(1) the protection of the privacy of the individual in his home [citations] ; (2) the protection of innocent persons who may also be present on the premises where an arrest is made [citation] ; (3) the prevention of situations which are conducive to violent confrontations between the occupant and individuals who enter his home without proper notice [citations] ; and (4) the protection of police who might be injured by a startled and fearful householder.' " (*Peterson, supra,* 9 Cal.3d at p. 723, quoting *Duke v. Superior Court* (1969) 1 Cal.3d 314, 321) Upon closer examination, these four policies may be distilled into two – "to prevent injury to police or citizens and to protect privacy interests." (*Hoag, supra,* 83 Cal.App.4th at p. 1209) Our task is therefore to evaluate the actions of the police in this case in light of these policies.

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[6] Pursuant to article 1, section 28, of the California Constitution, "a trial court may exclude evidence under Penal Code section 1538.5 only if exclusion is mandated by the federal Constitution." (*People v. Banks* (1993) 6 Cal.4th 926, 934; accord *In re Lance W.* (1985) 37 Cal.3d 873, 896 ["a court may exclude the evidence . . . only if exclusion is also mandated by the federal exclusionary rule applicable to evidence seized in violation of the Fourth Amendment"].)

III.

We turn to Green's contention that the trial court erred in finding that there had been substantial compliance with the knock-notice requirements. According to Green, the officers' initial knocking and announcement was insufficient to achieve the purposes of the knock-notice statutes because the police waited too long between knocking and announcing their presence and their actual entry into the apartment.[7]

As the trial court recognized in its oral ruling, this case presents a somewhat different factual scenario than prior knock-notice cases. In most cases, the appellants have contended that the police officers' delay in entering the residence after knocking and announcing their presence was too short. (See, e.g., *Hoag, supra,* 83 Cal.App.4th at p. 1211 [delay of 15 to 20 seconds]; *People v. Nealy* (1991) 228 Cal.App.3d 447, 450 [15 to 30 seconds]; *Trujillo, supra,* 217 Cal.App.3d at p. 1224 [18 seconds]; *Jeter, supra,* 138 Cal.App.3d at p. 936 [five to ten seconds].) In this case, in contrast, Green contends that the officers' delay was too long. Although we have found no California case that is precisely on point factually, we believe that we can answer Green's contentions by reference to the policies underlying the knock-notice rule.

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[7] Green seeks to bolster this argument by asserting there were no exigent circumstances that would have excused compliance with the knock-notice requirements. This line of argument misconceives the issue before us. As the People correctly point out, the trial court ruled that the officers had substantially complied with the knock-notice requirements, not that compliance was excused. Under appropriate circumstances, the existence of exigent circumstances may excuse compliance with knock-notice requirements and justify a completely unannounced entry. (See, e.g., *People v. Dumas* (1973) 9 Cal.3d 871, 877-878.) Substantial compliance with the knock-notice requirements of sections 844 and 1531 must be distinguished from excused noncompliance. "The former can occur only when . . . there has been some attempt to comply. The latter can occur in cases wherein the attempt to comply falls short of substantial compliance and also in cases . . . wherein there has been no attempt to comply." (*People v. Hall* (1971) 3 Cal.3d 992, 998, fn.3) The issue in the case before us is clearly one of substantial compliance, as it is undisputed that the police did knock and announce their presence, and thus "there has been some attempt to comply." In addition, at the suppression hearing, Officer Renois freely admitted that the police were not operating under exigent circumstances when they made their entry.

A. *Protection of Privacy*

Although probation searches are subject to the knock-notice requirements of sections 844 and 1531, such searches ordinarily do not infringe upon the interest in protection of the privacy of the individual in his home, because, by consenting in advance to the search, the probationer has waived his claim to privacy in his residence. (*People v. Constancio* (1974) 42 Cal.App.3d 533, 543; see also *People v. Kasinger* (1976) 57 Cal.App.3d 975, 979 ["by agreeing to submit to search as a condition of his probation, [appellant] had reduced his expectations of privacy"].) At the time of the search at issue in this appeal, Green was subject to a probation search condition. He thus cannot claim that his privacy interest was improperly invaded.

Moreover, it is undisputed that the police did in fact knock and give notice upon their arrival at Green's residence. They then waited between 20 and 25 minutes before entering the apartment. This lapse of time was certainly sufficient to give the occupants of the apartment time to choose to admit the police and to prepare themselves for the officers' entry.[8] (See *Trujillo, supra,* 217 Cal.App.3d at p. 1227-1228 [18-second delay between announcement and entry sufficient to protect defendant's privacy]; *Tacy, supra,* 195 Cal.App.3d at p. 1421 [knock-notice requirements protect privacy interests by allowing occupant " 'a few moments to decide whether or not he will open the door himself' "], quoting *United States v. Bustamante-Gamez* (9th Cir. 1973) 488 F.2d 4, 11.) In addition, the police also knocked and gave further notice of their presence before they entered the bedroom in which Green was found.[9] Under these circumstances, even if

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[8] Green cannot claim that the officers failed to comply with the requirement of section 1531 that they be refused admittance before entering the premises. After waiting a reasonable time for a response to their initial knocking and announcement of presence, the officers were entitled to assume either that no one was home or that no one intended to answer the door. (*Hoag, supra,* 83 Cal.App.4th at p. 1212, citing *People v. Elder* (1976) 63 Cal.App.3d 731, 739)

[9] Green does not contend that the police were required to knock and announce at the bedroom door. Most courts have concluded that the knock-notice requirements apply only to the outer doors of a residence. (See *Mays, supra,* 67 Cal.App.4th at pp. 974-976 [citing cases].)

Green had a protectable privacy interest, the police officers' actions did not infringe upon it.

B. *Protection of Police and Citizens*

The knock-notice requirements also seek to prevent injury to police or citizens who might react violently to a surprise, unannounced entry. (*Trujillo, supra,* 217 Cal.App.3d at p. 1227) In this case, however, the police entered the apartment using a key only after knocking loudly and announcing their presence and then waiting a substantial period of time. After hearing "excessive knocking" at the door and the announcement that the person demanding admittance was a police officer, it is extremely unlikely that the occupants of the apartment would mistake the police for unlawful intruders. The officers' decision to delay their entry by some 20 minutes, far from being unreasonable, seems to have been calculated only to avoid the unnecessary destruction of property, which is certainly a laudable goal. (See *Hoag, supra,* 83 Cal.App.4th at p.1211 [noting "the law's abhorrence of the unnecessary destruction of private property"].) In this case, we think that the police cannot be faulted for delaying their entry until the landlord arrived with the key. (See *Commonwealth v. Norris* (Pa. 1982) 446 A.2d 246, 249 ["The twenty minute delay . . . is indicative of nothing more than an extremely cautious and circumspect approach"].)

Green complains that "there is absolutely no evidence to suggest that . . . the police were heard and ignored the first time around." But as we have explained (see note 8, *ante*), once the police received no response at the front door, they were entitled to assume either that no one was present or, as Officer Renois apparently did, that they were being ignored.

Contrary to the contention in Green's reply brief, it would make no difference to our analysis if we were to assume that the residents were asleep when the police arrived and thus did not hear the initial knocking and announcement. In such instances, other courts have held that it would have been a useless gesture for the police to knock and announce themselves again. (*United States v. Leichtnam* (7th Cir. 1991) 948 F.2d 370, 373-374 [where officers may assume that residents are either absent or asleep, useless for

officers to announce they are executing warrant where they have identified themselves and drawn no response]; *Bosley v. United States* (D.C. Cir. 1970) 426 F.2d 1257, 1263 [knock and announcement a "useless gesture" where officers' knocking had failed to awaken sleeping defendant]; *Commonwealth v. Antwine* (Mass. 1994) 632 N.E.2d 818, 820 [useless gesture for police to announce their purpose if defendant were asleep and unable to hear knocking]; *State v. Jones* (N.H. 1985) 503 A.2d 802, 806-807 ["useless gesture" for police to knock and announce their presence where they knocked twice and failed to rouse sleeping defendant].)

IV.

In summary, we conclude that the trial court did not err in holding that the actions of the police in this case substantially complied with the knock-notice requirements of sections 844 and 1531. We thus find no constitutional infirmity in the search. Accordingly, the judgment is affirmed.

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McGuiness, P.J.

We concur:

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Corrigan, J.

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Pollak, J.